

EXHIBIT J

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

- - -

DIVERSI-PLAST PRODUCTS, INC.,)
a Minnesota Corporation,)
Plaintiff,)

No. 2:04CV01005 PGC

v.)

BATTENS PLUS, INC., a)
California Corporation,)
Defendant.)

CERTIFIED COPY

BATTENS PLUS, INC., a)
California Corporation,)
Counterclaimant,)

v.)

DIVERSI-PLAST PRODUCTS, INC.,)
a Minnesota Corporation,)
Counter-Defendant.)

DEPOSITION OF

LARS J. WALBERG

Glenwood Springs, Colorado

January 13, 2006

ATKINSON-BAKER, INC.
COURT REPORTERS
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REPORTED BY: PATRICIA VIGIL-LADNER, RPR

FILE NO.: 9F0A5B8

1 attention, they sent me a -- sent me some product
2 and that product is what we applied to a test
3 deck that was four feet by eight feet and did the
4 tests.

5 Q. First of all, what time period are we
6 talking about when this occurred?

7 A. '97, '98.

8 Q. Do you know what period of months of '97
9 or '98?

10 A. All that I can remember is it was warm.

11 Q. It was a warm period of time?

12 A. I mean, it was reasonable weather. Now I
13 don't know -- it doesn't seem to me that it was
14 summer, but then it wasn't -- I don't recall it
15 being -- it was comfortable weather.

16 Q. So it was warm weather in Colorado, and
17 that would lead you to believe that it was not
18 winter; is that correct?

19 A. Yes.

20 Q. What was the first idea that you
21 mentioned?

22 MR. MACARI: Objection, vague.

23 THE WITNESS: What do you mean?

24 Q. (By Mr. Wilcox) You said that you
25 communicated with Diversi-Plast an idea and they

1 sent you a product. What was this idea?

2 A. My idea was to take -- this -- if you
3 look at the -- we'd sold the ridge vent. The
4 ridge vent is made up of corrugated plastic
5 that's similar to this.

6 Q. Hang on a minute --

7 A. Similar to the tile batten, flow-thru
8 batten.

9 Q. Which is Exhibit Number 3?

10 A. Right. I'm very familiar with concrete
11 tile and clay tile roofs and their application.
12 One of the shortcomings of concrete tile and clay
13 tile roofs is how they are applied to the roof.
14 In that, there is always some amount of moisture
15 that gets past the tile and then would flow down
16 on top of the felt paper, flow down underneath
17 the tile, that's why you have felt paper.

18 At that time in Colorado and throughout
19 most of the west, tile was applied to four-foot
20 cedar battens that were applied on top of felt
21 paper.

22 Q. Okay.

23 A. Those effectively work as dams, turning
24 water that gets under the tile. Over time that
25 can lead to leaks.

1 Q. Now it can lead to leaks?

2 A. Where the moisture is going to find its
3 way through the felt paper and into the attic
4 space or rot the deck. I was aware of many tile
5 roofs in Colorado that had been, after six or
6 seven years had been torn off and contractors had
7 gone back in with new underlayment and would put
8 down what we called lath and batten systems.

9 Q. What is a lath and batten system?

10 A. Lath and batten is where you have
11 vertical pieces of lath. Lath is typically
12 three-eighths of an inch thick to a half an inch
13 thick and about an inch and a half wide. Those
14 would be applied, generally speaking, 16 inches
15 on center on top of underlayment, and then the
16 white wood battens, typically because they are
17 stronger than cedar, would be applied
18 horizontally on top of the lath. The purpose of
19 that is to get rid of dams, so you don't have any
20 dams underneath the tile.

21 Q. To clarify, the lath is put on with the
22 slope of the roof; is that correct?

23 A. Correct.

24 Q. And the batten is then put on top of the
25 lath?

1 A. Right.

2 Q. Horizontally?

3 A. Right, and provides the substrate for the
4 tile to rest on.

5 Q. Okay. Now you mentioned that a ridge
6 vent led you to this idea; is that correct?

7 A. Yes.

8 Q. What is the difference between a ridge
9 vent and your idea?

10 MR. MACARI: Objection, vague.

11 THE WITNESS: The usage.

12 Q. (By Mr. Wilcox) What is the structure of
13 the ridge vent that you mentioned? How does it
14 differ from --

15 A. How does a ridge vent differ from this?

16 Q. From your idea?

17 A. Obviously, the dimensions are different.
18 Typically ridge vent is softer, comes in a roll.
19 You don't need the structural component that you
20 need in a batten. I think there is also probably
21 a difference in relation to -- well, no, that's
22 not true. I think that's probably about -- I
23 mean, it's similar in that they both have flutes.

24 Q. Can you describe what you mean by flutes?

25 A. Well, the flutes are the areas between

1 corrugations that allow air or water to pass
2 through.

3 Q. So you formulated this idea and you spoke
4 to Diversi-Plast about it?

5 A. Yes.

6 Q. How did you describe the idea to
7 Diversi-Plast? What did you tell them?

8 A. Much like what we've discussed this
9 morning, discussed how tile roofs are installed,
10 the shortcomings of battens applied to the deck,
11 directly to the deck, the need for a batten that
12 would be strong enough to support the tile and
13 yet allow the passage of air and water to go
14 through the batten.

15 Q. Who were you speaking to at this time?

16 A. The best of my -- I know I had
17 conversations with Gary Urbanski, and I believe
18 the first conversations I had were with Jim
19 Augustine, but I don't remember.

20 Q. How did a soffit vent get involved in the
21 idea?

22 MR. MACARI: Objection, vague.

23 THE WITNESS: I guess the soffit vent got
24 involved in the idea in that, that's what was --
25 those were -- they may have been the samples that

1 Q. And you remember that it was warm?

2 A. Yes.

3 Q. Now they sent you this product and you
4 used it. Tell me how you used it and what you
5 did?

6 A. We built a deck at about -- a roof deck.
7 We simulated a roof deck at about a four and
8 twelve pitch, using two-by-fours to make it rigid
9 on the bottom. Took a four-by-eight sheet, had
10 it resting on a saw horse, guessing it was a four
11 and twelve pitch. Applied 30-pound felt paper,
12 asphalt saturated felt paper to the deck, just as
13 a roofer would to a roof, and then we applied
14 these -- well, we applied the product that was
15 sent --

16 Q. Just for a second. When you referred to
17 "these," you referred to Exhibit Number 3. Now,
18 do you remember, did the product that was sent
19 differ from Exhibit Number 3?

20 A. Yes.

21 Q. How did it differ?

22 A. I believe thickness-wise it was about the
23 same as this, which I'm guessing is, what, about
24 five-eighths of an inch, a little bit more, maybe
25 three-quarters of an inch, an inch and a half to

1 two inches wide, and I believe that they were in
2 four-foot strips. I don't remember for sure.

3 Q. Okay.

4 A. They were opaque. They weren't black,
5 and that's about all that I can remember about
6 it.

7 Q. Okay. As far as the way the corrugations
8 and passage ways going through Exhibit Number 3,
9 were they similar?

10 A. Yes.

11 Q. You said when you were conducting this
12 experiment that "we" did this. Who participated
13 in this?

14 A. Well, it was mostly me. Misty Guess,
15 that worked for me as an administrative
16 assistant, would come out and look at it on
17 occasion.

18 Q. So this structure was on two by fours, it
19 was at a slope.

20 A. Uh-huh.

21 Q. It had a plywood underlayment?

22 A. Yes.

23 Q. And then felt on top of that?

24 A. Uh-huh.

25 Q. And then this product --

1 A. Yes.

2 Q. -- was set up horizontally?

3 A. Uh-huh.

4 Q. And then there were tiles put on top of
5 that; is that correct?

6 A. We put tiles on about half, the bottom
7 half and left the top half exposed, and we also
8 rigged it with a hose that was running in a very
9 low volume. We put a metal piece across the top
10 that would distribute water across the assembly.

11 Q. Okay.

12 A. We turned on the water and left it on for
13 at least a couple of weeks, left it on for a long
14 time.

15 Q. What was the purpose of doing that?

16 A. My concern -- I'd thought about other
17 products or other things that could be used in
18 lieu of cedar battens for years, ever since -- I
19 guess I'm kind of a weirdo that way. Ever since
20 I got into the tile industry, I was trying to
21 come up with a different idea than cedar battens.
22 I'd come up with a couple things. One of my
23 ideas was to use product that was similar to
24 something on the market called, Yellow Spaghetti
25 Walk Mat. It's used in commercial buildings,

1 about this would have been by mail; is that
2 correct?

3 A. Probably fax and telephone, more likely
4 telephone.

5 Q. Did you ever fax anything, any drawing or
6 writing about that?

7 A. No.

8 Q. Diversi-Plast?

9 A. No.

10 Q. Did you take any notes about the idea?

11 A. No.

12 Q. Do you know of anyone else that took
13 notes about the idea?

14 A. No. I'm not aware of any.

15 Q. I'm going to refer you to an exhibit that
16 was previously marked as depo Exhibit Number 42.
17 This is a representation of a Circa 1998 soffit
18 vent that was drawn up by Mr. Morris during his
19 deposition.

20 Now, we have talked about the structure
21 of the product, and you stated that it was
22 product that Diversi-Plast sent to you that you
23 used in this experiment?

24 A. Yes.

25 Q. Does that drawing correspond to the

1 structure of that product?

2 MR. MACARI: I'm going to object. For
3 the record, this is a sketch by another
4 individual. It doesn't look to be complete, but
5 to the extent it's worth what it's worth, you can
6 go ahead and testify.

7 THE WITNESS: Your question is, does this
8 look like what I got?

9 Q. (By Mr. Wilcox) Correct.

10 A. Quite a bit taller than what I got.

11 Q. Let's go over what the differences are
12 between this and what you got. The dimension
13 tall, it says less than two inches. You stated
14 that about how tall was what you got?

15 A. What I got would have been a maximum of
16 three-quarters of an inch.

17 Q. As far as width, it says here less than
18 four inches?

19 A. Yeah, what I received would be much more,
20 was probably an inch and a half.

21 Q. And the length is about, it says that
22 it's four feet?

23 A. That's about the same.

24 Q. And as far as the representations that
25 are labeled one, two, and three, are those

1 similar to what you got?

2 A. What do you mean?

3 Q. There are representations of, I guess
4 corrugated plastic.

5 MR. MACARI: Object for the record.

6 Again, this drawing isn't complete. It doesn't
7 seem. I don't know what he is pointing to, but
8 you can go ahead and answer to the extent you
9 can.

10 THE WITNESS: It was layers of corrugated
11 plastic.

12 Q. (By Mr. Wilcox) By corrugated, meaning,
13 having, I guess those are corrugations, having
14 those angulations; is that correct?

15 A. Having flutes.

16 Q. Having flutes, thank you. Can you see
17 any other differences between the structure
18 represented here and what you got?

19 A. I don't recall how it was -- they were --
20 the layers were fastened.

21 MR. MACARI: I'll object. This doesn't
22 -- obviously, this drawing doesn't provide all
23 the information about the Circa 1998 soffit.

24 Q. (By Mr. Wilcox) Have you ever met
25 Richard Morris?

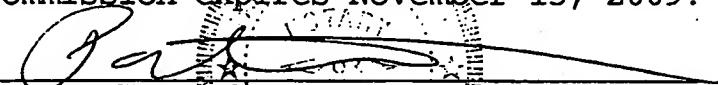
1 REPORTER'S CERTIFICATE

2 I, PATRICIA VIGIL-LADNER, Registered
3 Professional Reporter and Notary Public in and
4 for the State of Colorado, duly commissioned to
5 administer oaths, do hereby certify that,
6 previous to the commencement of the examination,
7 the witness was duly sworn by me to testify to
8 the truth in relation to the matters in
9 controversy between the said parties; that the
10 said deposition was taken in stenotype by me at
11 the time and place aforesaid and was thereafter
12 reduced to printed form by use of
13 computer-assisted transcription under my
14 supervision; that the foregoing pages is a true
15 and correct transcript of my stenotype notes
16 thereof;

17 That I am not attorney nor counsel, nor
18 in any way connected with any of the parties to
19 said action, nor otherwise interested in the
20 outcome of this action.

21 IN WITNESS WHEREOF: I have affixed my
22 signature and seal this 16th day of January 2006.

23 My commission expires November 15, 2009.

24 
25 PATRICIA VIGIL-LADNER, RPR
Registered Professional Reporter and
Notary Public